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FILED

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COPY ADMINISTRATIVE LAW
BUREAU

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HOYLE PRODUCTS, INC.)
)
Appellant,)
)
From a Decision of)
)
THE WORKERS' COMPENSATION)
INSURANCE RATING BUREAU)
OF CALIFORNIA,)
)
Respondent.)
_____)

FILE NO. ALB-WCA-95-14

PROPOSED DECISION

Hoyle Products, Inc. (Hoyle), producer of "Grip-Rite" grippers for pencils, Acu-Arc adjustable rulers and curves, lap-desks, and foldable bookstands, appeals the workers' compensation insurance rating classification assigned to its operations by the Workers'

It is undisputed that Hoyle's variety of products are not encompassed within one simple business category. This situation is known under the rules as a "multiple enterprise." As previously noted, the Bureau staff person identified three or four separate classifications he thought would be appropriate, but he believed Manual rules mandated aggregating all operations in the highest appropriate classification⁹.

While multiple enterprises can comprise more than one classification, certain conditions preclude multiple classification, as set forth in Paragraph 4 of Rule V. It provides:

Multiple Enterprises. If the employer's business includes a separate operation which does not normally prevail in the business described by the governing classification, such operation shall be separately rated in accordance with the following rules:

- (a) If such separate operation is described by a classification which carries a rate either equal to or higher than the rate for the governing classification, division of payroll shall be required, provided that:
 - (1) The operation is not described by any of the General Inclusions;
 - (2) The division is not contrary to the classification phraseology;
 - (3) The division is not contrary to the provisions of any other rules of the Manual.
- (b) If such separate operation is described by a classification which carries a rate lower than the rate for the governing classification, division of payroll shall be permitted only when the conditions as provided above in subparagraphs (1), (2) and (3) and the following additional conditions are met:
 - (1) The entire operation, except as hereinafter provided in Paragraph 9 "Miscellaneous Employees" and Paragraph 12 "Standard Exceptions", is conducted without interchange of labor, either in a separate building or on a separate floor of a building or

⁹There are exceptions to this design toward the highest classification. Rule V, paragraphs 11 and 12 put clerical personnel and outside sales staff in separate classifications because they are "standard exceptions."

on the same floor with other operations but separated by such structural partitions as effectively segregate the separate operations.

Moreover, under Rule VII, para. 19, when any location of an employer's business is written on a divided payroll basis, a single employee's payroll can only be divided between different classifications if payroll records and time cards are clearly maintained showing the time division between work in different classifications, but otherwise "the entire remuneration of the employee shall be assigned to the highest rated classification representing any part of his work."

Application of the Law to the Facts

A. Code 4478, "Plastic Goods Mfg.--N.O.C." Is the Proper Classification

In applying the law to the facts, the first step is to determine which are the most appropriate classifications, from the standpoint of process and hazard¹⁰, for Hoyle's variety of operations. As noted above, the subsequent application of rules that tend toward assignment of the highest rated classification may ultimately subsume this initial determination.

¹⁰Hoyle argued that a classification with a high rate could not possibly be appropriate for its low risk operations. Classification propriety is not based on finding a rate that seems appropriate to risk on the job. Jobs that are clearly dangerous may have lower rates than other less dangerous or equally dangerous jobs because the classification *rate* (as opposed to the classification itself) is based not only on risk, but on wage rate in that classification. (RT 46-48.) Thus, more dangerous jobs that pay high wages may have lower classification rates than equally dangerous jobs that pay low wages, because the Bureau is trying to ensure that employers of these equally dangerous jobs pay roughly equal insurance premiums. Because the rates are applied per \$100 of payroll, the employer paying higher wages will pay more rate-per-\$100's. Therefore, a lower classification rate will equalize the premiums the higher-paying employer pays with the premiums paid by employers paying lower wages for equally dangerous jobs.

It is undisputed that the wire bookholder work would be properly assigned, prior to the application of other rules, to Code 3257, "Wire Goods Mfg." at a rate of \$10.77. (Exh.1, p.18, Reporter's Transcript (RT) p.35.)

Hoyle's evidence showed that the Acu-Arc rulers and curves are professional instruments used by draftsmen, engineers, architects and chiropractors (RT pp.14, 26, 61 and Exh.A), not just "plastic rulers," as the Bureau would have it¹¹. The Bureau's contention that Code 3681 was not historically used for drafting instruments was not supported by the Classification Reference supplied by the Bureau as Exhibit 2. Instead, that Exhibit indicates that Code 3681 "contemplates a broad spectrum of professional and scientific instruments" and is not confined to manufacture of electrical products. Specifically, it states that the classification includes "precision measuring equipment, such as electronic scales, surveying equipment, oil well logging equipment, drafting equipment" (Emphasis added.) Moreover, in the section entitled "Analogous Assignments," there is included "Drafting Equipment Mfg.--rulers, span bars, lettering guides."¹² Therefore, it is found that the assembly of the rulers and curves is

¹¹While the curves might be seen as plastic manufacturing since the spline used is extruded at Hoyle, Bureau and Department of Insurance precedent require that assignment be made according to "end product" if an appropriate end product classification exists. See, AMR Industries, ALB-WCA-94-10 (1995).

¹²This language distinguishes the present state of interpretation of the scope of this classification from that which obtained in 1984, when Devon Industries, SF 6960-R-35, cited by the Bureau, issued. Additionally, the curves are manufactured, not just assembled, as were the products in Devon Industries. Moreover, assembly is now included within the ambit of manufacturing when there is not a separate assembly classification. (RT pp.60-61.) There is not a separate professional drafting ruler assembly classification.

properly assigned to Code 3681, "Instrument Mfg.--professional or scientific--N.O.C." at a rate of \$2.63.¹³

The gripper manufacture operation was properly assigned to Code 4478, "Plastics Mfg.--N.O.C." at a rate of \$12.33. The Bureau's witness persuasively testified that grippers do not belong in the classification for professional instruments without substantial disagreement from Hoyle. (RT pp.37-38.) There is no specific classification describing the end product of pen or pencil grippers¹⁴. Although it was conceded by the Bureau that the grippers started out as plastic tubes, the Bureau effectively showed that Code 3022, "Pipe or Tube Mfg.--other than iron or steel" had consistently been used only for other metal pipes or tubes, not plastic tubes. (RT p.42, Exh. 2.) The extrusion of plastic tubes is, however, included in Code 4478. (RT pp.41, 49.)¹⁵

The Bureau staff person concluded that the fabrication of portable lapdesks was assignable to Code 9522, "Furniture Upholstery" at a rate of \$9.02 in 1992. There was little evidence about this portion of the work and the C&R Committee did not address it. As will be shown, a determination on this issue is not necessary.

¹³The Bureau's 1994 interpretation of the Plastic Goods Manufacturing Classifications, lodged with the Administrative Law Bureau at the same time as Exhibit 2, states that "[w]hen possible, firms engaged in the manufacture of a plastic product shall be assigned to that classification which specifically describes the firm's product." Although not applicable in 1992, this interpretation is in harmony with the "end product" assignment practice previously noted.

¹⁴ Hoyle asserted that perhaps Code 4432, "Pen or Mechanical Pencil Mfg." was an appropriate classification, but no evidence indicates that pens or mechanical pencils, or anything analogous, are manufactured as end products by Hoyle. Grippers are not pens or pencils.

¹⁵Although not authoritative for 1992 classification purposes, the later-occurring division of Code 4478 into plastic making processes including extrusion, (Exh.2, Classification 4495) explicitly confirms the appropriate assignment for plastic tubes.

Of these four classifications, the governing classification is Code 3681, "Instrument Mfg.--professional or scientific," because that classification has the largest payroll. (Rule V, para. 2.) As previously noted, at the 1993 inspection, fabrication of the curves and rulers accounted for 40% of payroll. No other classification had a greater payroll. The C&R Committee erred to the extent its decision depended upon Code 4478 as the governing classification.

Applying the "multiple enterprise" rule, Rule V, para. 4(a), division of payroll is required. All the other operations have a higher rate than does Code 3681, the governing classification, and none of the reasons not to divide payroll listed under subsection (a) apply. In other words, under this rule, only the 40% of payroll ascribed to Acu-Arc curve and ruler fabrication would be rated at \$2.63. The Bureau is incorrect in applying subdivision(b)(1); this subdivision is only applicable where the governing classification has a higher rate than the other appropriate classifications.

Unfortunately for Hoyle, there is yet one more rule to apply. That is Rule VII, para. 19, "Division of Single Employee's Payroll." The preponderance of the evidence indicates that the employees at Hoyle do "whatever needs to be done." (Exh.1, pp.63-64, RT pp.33-34, Exh.1, p.84.) Because there is insufficient evidence to assign any one employee to any one classification, the question is whether each or any of them can have their remuneration divided and assigned to different classifications according to how much they work on each operation. Under Rule VII, para. 19, in a situation with the possibility of divided payroll, the remuneration of any one employee may not be divided between two or more classifications unless the employer has maintained complete and accurate records indicating the time spent by the

employee in each separately rated type of work. Otherwise, "the entire remuneration of the employee shall be assigned to the highest rated classification representing any part of his work." There is no evidence showing that the necessary time cards were maintained. Therefore, because the preponderance of the evidence indicates no basis upon which to assign an individual employee to a distinct classification, and because there are no time cards to base a division of an employee's remuneration among classifications, Hoyle's operations are inexorably assigned upward to the highest rated classification. That classification is Code 4478, "Plastic Goods Mfg."

Hoyle argues that it is unfair to rate the entire operation on the extrusion that two employees do six days a month. This "unfairness" could be avoided by keeping employees engaged in only one operation or by keeping fastidious records of employee time on each type of work. Without that separation, under the rules, it must be held that only one classification, Code 4478, "Plastic Goods Mfg." is appropriate in the Hoyle Products, Inc. workplace for the years in question.

Based on dicta in Devon Industries, Inc., SF 6960-R-35, Hoyle asserts that its low claims experience indicates that its rating is too high. The experience modification process addresses the need for rate modification based on claims experience. Also, Mr. Clark noted that the low claims experience of a business with very few employees is not unusual or indicative of an incorrect classification. (RT pp.50-51.)

Hoyle also contends that it is simply unfair to reclassify its operations when nothing has changed since 1980. This argument is unpersuasive. The law applicable in 1992 prohibited insurance carriers from continuing in force insurance policies at premium rates less than the rates

approved by the Commissioner. (Rule I, para.3.) The Bureau was the Commissioner's agent for the purpose of initially determining the correct rate for Hoyle. Once that determination was made, the rate had to change to conform to law, regardless of the fact that Hoyle had been misclassified for many years.

In conclusion, the Bureau properly classified Hoyle's operations in Code 4478, "Plastic Goods Mfg.--N.O.C."